IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 6786 of 1998
with
SPECIAL CIVIL APPLICATION NO 7738 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESH B KELLA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6786 of 1998
   MR MM TIRMIZI for Petitioner No. 1
   MS DEVANI, A.G.P. for Respondent No. 1
2. Special Civil Application No. 7738 of 1998
   MR DK ACHARYA for Petitioner No. 1
   MS DEVANI, A.G.P. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 26/12/2002

ORAL COMMONJUDGEMENT
(Per : MR.JUSTICE B.J.SHETHNA)

1. Both these petitions are disposed of by this common Judgment as the common question is involved in both these petitions.

2. Initially, Notification u/s. 4 of the Land Acquisition Act (for short "the Act") was published on 1.4.1980, followed by Notification u/s.6 of the Act. The said Notifications were challenged in Special Civil Applications No.1535 of 1984 and 1536 of 1984. Both these petitions were dismissed by Division Bench of this Court by its common Judgment and order dated 11.1.1996. The said Judgment is annexed to both these petitions.

3. After the aforesaid petitions were dismissed an Award came to be passed u/s.11 of the Act on 31.8.1998. Hence, these fresh petitions.

4. Learned Counsel appearing for the petitioners vehemently submitted that u/s.11(A) of the Land Acquisition Act the Collector is bound to declare the Award u/s.11 within a period of 2 years from the date of publication of the declaration and if no Award is made within that period of 2 years then the entire proceeding for the acquisition of the land was lapse. It was submitted by the learned Counsel for the petitioners that initially Special Civil Application No.1535/84 and 1536/84 were dismissed by the Division Bench of this Court on 11.1.1996 whereas the Award u/s.11 came to be passed on 31.8.1998 which is after a period of 2 years, therefore, the entire proceeding lapse.

5. Ms. Devani, learned A.G.P., appearing for the respondents, submitted that having failed on earlier occasion in their challenge to the Notification issued u/ss. 4 & 6 of the Act it was not open to the petitioners to make the same challenge in these petitions. However, learned Counsel for the petitioners submitted that they have also challenged all the subsequent proceedings initiated under the Act which includes Sections 11 & 11(A) of the Act. He has also submitted that all through-out in the petition they have challenged the declaration of Award u/s.11 of the Act on the ground that

it was declared after 2 years. Therefore, the entire proceeding must lapse. However, there is no specific prayer whatsoever made in their petitions. Pleadings are necessary in such type of cases where the petitions are filed under Article 226 of the Constitution of India. Therefore, on this ground alone both these petitions are required to be dismissed.

6. On merit also we do not find any substance in these petitions. It is true that earlier writ petitions, viz. Special Civil Application Nos.1535/84 and 1536/84 were dismissed on 11.1.1996 and the stay granted earlier was vacated in both those petitions, but the copy of the order passed by this Court was received by the Land Acquisition Officer only on 5.9.1997 and the Award u/s.11 came to be passed on 31.8.1998 which is admittedly within a period of 2 years.

7. Explanation to Section 11 A makes it clear that in computing the period of 2 years the period during which any action of proceedings to be taken in pursuance of the said declaration is stayed by an order of a Court shall have to be excluded.

The submission of the learned Counsel for the petitioner was that their earlier petitions were dismissed and the stay granted earlier stood vacated by the Division Bench of this Court on 11.1.1996. Therefore, the Authority was supposed to declare the Award within a period of 2 years from that day i.e. 11.1.1996. The said period would expire on January 10, 1998, whereas Award u/s.11 came to be passed only in August, 1998 which is admittedly after a period of 2 years. It is no doubt true that the Division Bench of this Court earlier dismissed their writ petitions on 11.1.1996 and vacated the interim relief, but the vacation of interim relief granted in favour of the petitioners must be brought to the notice of the concerned Authority. Merely because they were represented through their Counsel before the Court would not be sufficient. Unless and until certified copy of the said Judgment and order passed by the Court is brought to the notice of the Authority, the Authority is not supposed to act. The period of 2 years would start only from the date of the Notice. In reply Affidavit it has been clearly stated that the copy of Judgment and order passed by this Court on 11.1.1996 was received by them only on 5.9.1997. In that view of the matter, admittedly the Award dated 31.8.1998 passed u/s.11 of the Act was within a period of 2 years.

8. In view of above discussion, we do not find any substance or merit in this petition. Accordingly, they fail and are hereby dismissed. Ad.interim relief, if any, granted earlier is vacated. Rule discharged with Costs.

(B.J.Shethna, J.)

Date : December 26, 2002

(Kundan Singh,J.)

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